### IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA ATLANTA DIVISION

Paulette E. Rakestraw, on behalf of herself and all persons similarly situated, )	
Plaintiff, ) v. )	CIVIL ACTION FILE  NO. 1:18-cv-03144-ELR-LTW
Nationstar Mortgage, LLC.,  Defendant.  )	Tio. Till ev datti EER ET w

## MOTION FOR LEAVE TO AMEND COMPLAINT

COMES NOW, Plaintiff Paulette E. Rakestraw, by and through her attorney of record, and files this Motion For Leave To Amend Class Action Complaint.

#### ARGUMENT AND CITATION OF AUTHORITY

This Court's Report and Recommendation determined that Ms. Rakestraw's original complaint did "not provide enough detail about Nationstar's responses." Report at p. 23. Accordingly, Plaintiff has filed this Motion For Leave To Amend Complaint accompanied by a copy of the proposed Amended Complaint. This amendment adds the factual details that the Report held were lacking and will resolve the sole issue that the Report cites as the reason the original Complaint

should be dismissed. These factual details are added to the Complaint in paragraphs seven, eight, and nine. See Exhibit 1 (First Amended Class Action Complaint).

The Federal Rules of Civil Procedure allow for liberal amendment of the pleadings. Rule 15(a) states that a party can amend its pleading "by leave of court ... and leave shall be freely given when justice so requires." Also Foman v. Davis, 371 U.S. 178, 182 (1962) (Rule 15(a) declares that leave to amend "shall be freely given when justice so requires; this mandate is to be heeded"). In McKinley v. Kaplan, 177 F.3d 1253 (11th Cir. 1999), the Eleventh Circuit laid out the standard courts should use to determine whether to grant leave to amend. The Court stated:

[i]n the absence of any apparent or declared reason – such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc. – the leave sought should, as the rules require, be "freely given."

# 177 F.3d at 1258 (quoting <u>Foman</u>, 371 U.S. at 182).

In the present case the amendment is being timely sought as a result of the pleading deficiencies identified in the Report issued just last Wednesday. Ms. Rakestraw's sole motivation is to correct those deficiencies as quickly as possible. There is no undue prejudice to Nationstar because it has long been aware of these facts that have now been added to the pleading.

### **CONCLUSION**

Because there is no improper motive on the part of Ms. Rakestraw, because there is no undue prejudice to Defendant, and because of the Federal Rules' liberal allowance for amendment, this Court should allow the attached First Amended Class Action Complaint.

Submitted this 3<sup>rd</sup> day of June, 2019.

BY: Wayne Charles, P.C.

s/Wayne Charles
Wayne Charles
Georgia State Bar No. 515244

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Attorney for named Plaintiff and the Class

# **CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 5.1**

I hereby certify that I prepared the foregoing in Times New Roman, 14-point font, as approved by Local Rule 5.1.

s/Wayne Charles
Wayne Charles

### **CERTIFICATE OF SERVICE**

I hereby certify that on June 3, 2019, I presented the foregoing to the Clerk of Court for filing and uploading to the CM/ECF system, which will send a notice to the counsel of record listed below:

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Attorney for Defendant Nationstar Mortgage, LLC

DATED this 3<sup>rd</sup> day of June, 2019.

s/Wayne Charles
Wayne Charles